Remarks/Arguments

The prior office action mailed November 17, 2004 withdrew the prior written description rejection and provided a new Non-Final Office action on the merits. The office action indicated that the Final Action mailed April 22, 2004 was withdrawn.

Amendment to Specification and Claims

The present amendment amends the specification; amends claims 12, 31, 62, 68, 77, 86-88, and 98-100; cancels claims 1-9, 13-17, 21-28, 32-36, 38, 40-44, 97 and 102; and adds new claims 103-105. The amendments and cancellation of claims is without prejudice to future prosecution.

The amendments to the specification remove embedded hyperlink and/or other forms of browser-executed code. The disclosure was objected to for containing embedded hyperlink and/or other forms of browser-executed code.

Claims 12, 31 and 100 were amended to further describe the cell as a prokaryotic organism.

Editorial revisions were made to Claim 62, 68, and 77.

Claims 86-88 were amended, and new claims 103-105 were added, to further describe the organism as either *Staphylococcus aureus* or *Enteroccus faecalis* and match the organism with particular sequences. Support for the amendment is provided for, example, on pages 198, 446, 466, 468, 479, 504, and 517, which reference target genes and antisense nucleic acids to a particular target gene.

Claim 98 was amended to refer to polypeptides encoded by target genes, where the target genes can be inhibited by SEQ ID NOs.: 521, 1390, 1463, 1845, 2782 or 3283.

Claim 99 was amended to refer to target genes, where the target genes can be inhibited by SEQ ID NOs.: 521, 1390, 1463, 1845, 2782 or 3283.

35 U.S.C. § 112 (Written Description)

Claims 12, 31, 45-69, and 71-102 stand objected for allegedly failing to comply with the written description requirement. The examiner argues that written description is lacking: (1) based on the claims broadly covering any type of sensitized cells including cells from higher

organisms; (2) and based on some claims indicating antisense nucleic acid having at least 97%, 95%, 90%, 85%, 80%, or 70% sequence identity to SEQ ID NO: 1463. The office action also refers applicant to the interim written description guidelines published on December 21, 1999 in the Federal Register at Volume 64, Number 244, pp.71427-71440 ("Guidelines"). The rejection is respectively traversed.

Independent claims 12, 31 and 100 were amended to further describe the cells used in the claimed method as a prokaryotic organism. Claims 12, 31, and 100 each provide relevant identifying characteristic sufficient to comply with the written description requirement. The Guidelines point out the importance of identifying characteristics and allow for functional descriptions:

> An applicant may also show that an invention is complete by disclosure of sufficiently detailed **relevant identifying characteristics** which provide evidence that applicant was in possession of the claimed invention, *i.e.,* complete or partial structure, other physical and/or chemical properties, functional characteristics when coupled with a known or disclosed correlation between function and structure, or some combination of such characteristics. {Emphasis added.]

Guidelines at page 71435, third column, second paragraph.

Claim 12 is directed to a method for screening a candidate compound where the target gene is one that can be inhibited using either SEQ ID NOs: 521, 1390, 1463, 1845, 2782 and 3283. The application identifies these sequences as either: (1) antisense nucleic acid (SEQ ID NOs: 390, 1463, 1845, 2782 and 3283) targeting the same *S. aureus* gene (SEQ ID NO: 12600); or antisense nucleic acid (SEQ ID NO: 521) targeting the related *Enterococcus faecalis* gene (SEQ ID NO: 10689). (See the specification at pages 198, 446, 466, 468, 479, 504, and 517.)

The target gene provides a reference point for different antisense nucleic acids. The antisense nucleic acid hybridizes to the target nucleic acid through complementary base pairing. The functional relationship between the target nucleic acid and antisense nucleic acid provides structural constraints and identifying characteristics.

Claim 31 provides various descriptions of the target gene including descriptions of genes having a particular structural relationship to a target gene inhibited by SEQ ID NO: 521, 1390, 1463, 1845, 2782 and 3283. One of the provided relationships indicates the target gene has at

least 70% nucleic sequence identity to a gene that is inhibited by either ID NO: 521, 1390, 1463, 1845, 2782 and 3283.

Reference to at least 70% nucleic sequence identity provides an identifying structural characteristic distinguishing the nucleic acid sequence from other sequences. Sequence identity can be evaluated as described in the application and claims using known programs and techniques.

Claim 100 is directed to a method for screening a candidate compound using antisense nucleic acid of SEQ ID NO: 521, 1390, 1463, 1845, 2782 and 3283. The present application illustrates the use of such antisense nucleic acid.

Accordingly the claims are in condition for allowance. Please charge deposit account 13-2755 for fees due in connection with this amendment. If any time extensions are needed for the timely filing of the present amendment, applicants petition for such extensions and authorize the charging of deposit account 13-2755 for the appropriate fees.

Respectfully submitted,

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